

**MINUTES FOR THE
MEETING OF THE
BOARD OF LAND AND NATURAL RESOURCES**

DATE: FRIDAY, FEBRUARY 13, 2004
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:12 a.m. The following were in attendance:

MEMBERS

Mr. Peter Young
Mr. Timothy Johns
Mr. Ted Yamamura

Ms. Lynn McCrory
Ms. Kathryn Inouye

STAFF

Ms. Dede Mamiya, Land Division
Mr. Michael Buck, DOFAW
Mr. John Dooling, DOT

Mr. Sam Lemmo, OCCL
Ms. Athline Clark, DAR
Mr. Derrick Lenning, DOT

OTHER

Mr. Kyle Sakumoto, D-13
Mr. Desmond Wery, D-16
Mr. Ronald Tom, D-15
Mr. Peter Shay, D-9
Mr. Paul Ueoka, D-9
Ms. Sheree Nitta Stewart, D-10

Ms. Gertrude Berger, D-13
Mr. Jonathan Chun, D-8
Ms. Susan Nakahara, D-4
Mr. Dave Chavalea, D-9
Mr. Kris Palagi, D-12
Mr. Ronald Weidenbach, D-14

{Note: language for deletion is [bracketed], new/added is underlined}

Item A-1: Minutes of January 23, 2004

Deferred, no quorum

Item D-13: Consent to Assign Grant of Easement No. S-5124, A.D. Furtado Properties Trust, Assignor, to A.D. Furtado Properties Lahaina, LLC, Assignee, Lahaina Town, Lahaina, Maui, TMK: (2) 4-6-001:029.

Dede Mamiya Administrator for the Land Division informed the Board the subject easement is for concrete pillars. The family made the request for the assignment of the lease as they have transferred ownership of the adjacent parcel from the family trust to the family limited liability company. She also confirmed the assignor is compliant with all of the terms of the easement. Ms. Mamiya recommended the Board consent to the assignment of Grant of Easement No. S-4125 from A. D. Furtado Properties Trust to A.D. Furtado Properties Lahaina, LLC.

Kyle Sakumoto attorney for the applicant and Gertrude Berger one of the applicants were present.

Unanimously approved as submitted (Yamamura/Johns).

Item D-16: Amend Prior Board Action of February 22, 2002, Item D-1, Cancellation of Revocable Permit No. S-7207 and Re-issuance of a New Revocable Permit to the County of Hawaii, Ooma 1st, Kalaoa, North Kona, Hawaii, TMK: (3) 7-3-10:por. of 42.

Ms. Mamiya confirmed at a prior meeting the Board approved the cancellation of a Revocable Permit and its reissuance to the Kona Palisades Estates Community Association for a temporary fire station. Upon review staff realized the permit should have been issued to the County of Hawaii, as they are the operators of the Hawaii County Fire Department. Ms. Mamiya recommended the Board amend its prior actions of February 22, 2002, agenda item D-1 by deleting all references of the Kona Palisades Estates Community Association as being the applicant and inserting the County of Hawaii as the Applicant/Permittee, amending the monthly rental and Collateral Security Deposit to be Gratis and amending paragraph 3.d of the Recommendation Section as stated in staff's submittal.

Desmond Wery of the Hawaii County Fire Department was on hand to answer any questions.

Unanimously approved as submitted (Johns/Inouye).

Item D-8: Grant of Term, Non-Exclusive Easement for Access and Utility Purposes to Association of Apartment Owners of Kipapa Ridge Estates Condominium, Por. of Kapaa Homesteads, 2nd Series, North & South Oloheua, Kauai, TMK: (4) 4-4-2: Kalama Stream.

Ms. Mamiya communicated the applicant is seeking an easement for a roadway and culvert that were constructed by the previous owners of the property prior to 1987 as a means to cross Kalama Stream to access their property. Confirmation was received from the Commission of Water Resource Management and the Department of Health that no permits were required. Staff is recommending a fine of \$500 for construction of the stream crossing facility. Ms. Mamiya recommended the Board authorize the issuance of a 55-year term non-exclusive easement for access and utility purposes and impose a fine of \$500 for the encroachment upon public lands without authorization.

Jonathan Chun representing the applicant noted his agreement with staff recommendations.

Unanimously approved as submitted (McCrory/Inouye).

Item D-15: Consent to Assign General Lease No. S-4644, Ronald W.S. Tom, Commissioner, Assignor, To GE Capital Hawaii, Inc., Assignee and from GE Capital Hawaii, Inc., Assignor to PCCP/LDC Pearl Kai, LLC, Assignee and Consent to Mortgage, Aiea, Ewa, Oahu, TMK: (1) 9-8-013:014.

Ms. Mamiya made it known last year the subject lease was foreclosed on and now staff would like to assign this lease. In 1986 the Board waived the performance bond requirement and Ms. Mamiya asked that the performance bond requirement be reinstated. The applicant is also seeking for consent of a loan in the amount of \$16,850,000, which is being secured by two properties, the Westridge Shopping Center and the Pearl Kai Shopping Center. Ms. Mamiya recommended the Board Consent to the assignment of General Lease No. S-4644, Reinstate the performance bond requirement and consent to the mortgage.

Ronald Tom Commissioner was present.

The Board amended the Recommendation Section by

- 1) **Deleting all of item A**
- 2) **Consent to the assignment of General Lease No. S-4644, from [~~GE Capital Hawaii, Inc.~~] Ronald W.S. Tom, Commissioner as the Assignor, to PCCP/LDC Pearl Kai, LLC, as Assignee, subject to the following:**

Unanimously approved as amended (Inouye/McCrory).

Item D-4: Resubmittal – Rescind Prior Board Actions of January 22, 1999, Item D-7; Consent to Mortgage and Extension of Lease Term, General Lease No. S-4313 & S-4314, Thomas Nakahara, et al, Lessee, Waiakea, South Hilo, Hawaii, TMK: (3) 2-2-58: 23 & 24.

Ms. Mamiya reminded the Board in 1999 approval was given for a lease extension and consent to mortgage for General Lease No. S-4313 and S-4314 but it never went through. Upon further review of the mortgage documents it was revealed the mortgage obtained secured only their fee simple private property and not the lease hold property as originally expressed. Therefore all processing on the consent to mortgage and lease extension as approved by the Board ceased.

The applicant is now seeking a \$120,000 loan from First Hawaiian Bank of which \$33,000 would be used for roof repairs. The loan is conditional upon an extension of the lease to fifteen (15) years. Ms. Mamiya recommended the Board rescind its prior Board action of January 22, 1999, Item D-7, Consent to the mortgage and authorize the extension of General Lease Nos. S-4313 and S-4314.

Member McCrory had concerns with the Board authorizing a 15-year extension of the leases when the applicant was using \$33,000 for roof repairs and the remainder of the loan proceeds would be used solely for the operations or improvements of the leased premises.

Susan Nakahara representing the applicant came forward to testify. Ms. Nakahara informed the Board they've spent several thousand on repairs and the year before they've spent a couple thousand on plumbing. She noted they were constantly doing repairs on the property. When asked by the Board if she would agree to the loan proceeds being used solely for improvements instead of operational expenses, Ms. Nakahara noted her agreement.

The Board amended the Recommendation Section

2. A. "The loan proceeds shall be used solely for the ~~[operations or]~~ improvements of the leased premises as stated in "Use of Loan Proceeds" above. The Lessee shall maintain records of loan expenditures, which may be inspected by the Department."
3. "Authorize the 15-year (expiring 2025) extension of General Lease Nos. S-4313 and S-4314 under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:"

The Board clarified the loan amount is \$120,000 of which \$33,000 will be used solely for improvements.

Approved as amended (Johns/Yamamura).

Member McCrory opposed approval.

Item D-9: Grant of Term, Non-Exclusive Easement to Cang Bai Limited for Access and Utility Purposes, Waiohuli-Keokea, Kula, Makawao, Maui, TMK: (2) 2-2-004:por. 066.

Ms. Mamiya indicated another access and utility easement along the same alignment requested by Cang Bai Limited has been issued to the Association of Owners of Views at Keokea (Association). The District land division office received a letter from the Association objecting to the request before the Board because they were concerned with liability, safety, traffic congestion and a perception that the Applicant was intending to utilize its easement over their properties as access for further properties or developments beyond the Applicant's parcel 40. Ms. Mamiya clarified for the Board the easement Cang Bai Limited is requesting would only allow them to access parcel 40 and no other parcel. Also the easement area is only 12 feet wide, which according to County Ordinance can provide access to only a single lot (lot 40). Ms. Mamiya recommended the Board authorize the issuance of a 55-year term, non-exclusive easement to Cang Bai Limited covering the subject area for access and utility purposes.

Peter Shay attorney for the Association and Dave Chavalea president of the Association testified. Mr. Shay asked the Board to consider rescheduling this item to a Board meeting schedule on Maui so other homeowners of the Association could testify. He told the Board not hearing this item on the island of Maui is a violation of the other homeowners right to due process. Mr. Shay went on to orient the Board as to the location of parcel 40 and other pertinent parcels and roads.

Mr. Chavalea gave the Board a letter from K&G Construction, which noted they would be performing work on the Marterie property, which is located above parcel 40 and will be using the cement driveway (located in lot 40) for access. He told the Board if Cang Bai Limited were given an easement it would allow potential homeowners of the 2100-acre parcel should it be subdivided, to access the property from below. Also if the area were to be developed it would increase the traffic in the area.

Mr. Shay went on to tell the Board Cang Bai Limited does not need an easement over the subject area because they are a part of the Association and in doing so they already have access through an easement issued by the State to the Association. Mr. Shay voiced the Association concerns that if Cang Bai Limited were given a direct easement he would no longer participate in the Association and would refuse to pay his share of the cost for the liability insurance and maintenance of the road.

The Board clarified to Mr. Shay and Mr. Chavalea that Cang Bai Limited is seeking an easement from the State for access purposes. As far as future developments using this access road the easement only entitles access to parcel 40.

Paul Ueoka representing the applicant told the Board there is a question as to the existence of the Association. He noted there was no record to show the Association exists. Mr. Ueoka made it known his client wants to make sure he has access to his property in the event the Association does not exist and the easement from the State is considered void.

The Board asked Mr. Chivalea how man members belong to the Association and where they were presently living. Mr. Chivalea answered there were six members of the association and aside from himself and the applicant there was only one other member

residing on the island of Maui. With regards to the Association being registered with the Department of Commerce and Consumer Affairs, Mr. Chivalea noted he did not complete the paperwork but would do so within the month. As far as paying taxes the Association has not filed any tax returns.

Motion made at 10:15 a.m. by Member Johns and second by Member McCrory to move into Executive Session to discuss legal matters with the deputy attorney general pertaining to this item.

The meeting was resumed at 10:23 a.m.

In closing Mr. Shay asked the Board to deny this application before them. He requested if the Board does grant an easement to the applicant that the easement include specific conditions that are clearly enforceable.

The Board amended recommendation 2B as follows

“The term easement shall inure only to the benefit of the real property described as Tax Map Key: (2) 2-2-004: 040.”

Approved as amended (Yamamura/Johns).

Member Inouye opposed approval.

Item D-12: Plan Modification for Conservation District Use Permit KA-3128 for the Construction of a Single-Family Residence, Robert A. Bothman, Hanalei, Kauai, TMK: (4) 5-3-03:014.

Sam Lemmo Administrator for the Office of Conservation and Coastal Lands communicated the applicant has modified the construction plans previously submitted to the Board on September 12, 2003 when Board approval was granted and would therefore like the Board to approve the new plans. Mr. Lemmo feels the modifications are within the existing envelop that was previously approved. He recommended the Board approve the subject plan revision to the Bothman Single Family Residence.

Kris Palagi representing the applicant stated he had no objections to staff's recommendation.

Unanimously approved as submitted (McCrory/Inouye).

Item D-10: Request to Extend the Processing Period for an Additional 180-days for Conservation District Use Application KA-3142 for the Ben-Dor Single Family Residence, Edi Ben-Dor c/o Walton Hong; Haena District, Kauai, TMK: (4) 5-9-002:020.

Mr. Lemmo reminded the Board when this item first came to the Board, staff had concerns with the proposal and requested modifications be made. In response the applicant requested a contested case hearing. Currently the Department is in a contested hearing mode and a hearings officer still needs to be hired therefore Mr. Lemmo is recommending the Board approve this request to extend the processing Period for CDUA KA-3142B an additional 180-days.

Sheree Nitta Stewart representing the applicant conveyed that their written request was for an additional 90-day extension and would like the Board to limit the extension to 90 days. She noted a 90-day extension of the 180-day expiration was early granted and in the past ninety days no progress was made. She asked the Board to limit the extension to the 90 days requested by her client.

A motion was made at 10:30 a.m. by Member Johns and second by Member McCrory to move into Executive Session to discuss the time extension issue.

The meeting was resumed at 10:37 a.m.

The Board amended the Recommendation Section as follows

“That the Board of Land and Natural Resources approve this request to extend the processing period for CDUA KA-3142B an additional [~~180-days~~] 90 days to allow sufficient time to complete contested case hearing process.

Unanimously approved as amended (McCrory/Inouye).

Item D-14: Second Time Extension Request for Conservation District Use Permit OA-2504 for a Commercial Aquaculture Facility at Dillingham Quarry, Ronald P. Weidenbach dba Hawaii Fish Company, Kaena, Waialua District, Oahu, TMK: (1) 6-009-001:003 & 033.

Mr. Lemmo conveyed Mr. Weidenbach first received approval in 1992 for a development of a commercial aquaculture facility at Dillingham Quarry. A previous time extension was requested and granted in 2001. Due to encountering a number of difficulties the applicant is seeking a second extension of three years. Mr. Lemmo acknowledged he has met with the applicant to discuss adequate benchmarks for the Years 2005, 2006 and 2007 regarding the proposed project. Mr. Lemmo recommended the Board approve the extension of three (3) years to complete project construction.

Ronald Weidenbach the applicant informed the Board with regards to the farm operation's office the walls are up but roofing, plumbing and wiring needs to be completed. Construction on the fish hatchery is underway but the greenhouse needs to be constructed as well as a quansi hut. As for the pond-side aeration shed it has not been built. With regards to the freshwater well currently Mr. Weindenbach has an exploratory permit but he is in the process of obtaining a use permit from the Water Commission. The individual wastewater treatment system has been approved and construction is anticipated to start in

February of 2004. The containers for the feed storage building are in place but a roof and flooring is needed. Lastly the containers for the maintenance building are in place but the floor needs to be laid and roof needs to be constructed.

Mr. Weidenbach made it known he has received a reimbursement grant and 2 USDA innovative research grants which shall be used for salary purposes.

The Board made it clear to Mr. Weidenbach if he does not complete the aquaculture facility by 2007 he will not receive another time extension instead he will need to complete a new application.

The Board amended Recommendation 2)

“2. That the applicant meet with staff to discuss adequate benchmarks for the Years 2005, 2006 and 2007 regarding the proposed project, and that the applicant submit an annual report (March 23, 2005, 2006, and [2207] 2007 to the Chairperson (or his authorized representative on the status of the proposed project; and”

Unanimously approved as amended (Inouye/McCrory).

Item D-11: After the Fact Conservation District Use Application OA-3158B For an Existing Concrete Boat Ramp, Seawall, CRM Wall and Reconstruction of a Wooden Pier, Dennis Tanaka c/o Donald Clegg, Analytical Planning Consultants, Kaneohe Bay, Koolauloko, Oahu, TMK: (1) 4-4-018:084.

Mr. Lemmo indicated the applicant appeared before the Board in June 2003 in the form of a violation for building a pier without authorization. Part of staff's recommendation included the Tanaka's applying for an after-the-fact approval for the construction of the pier. The application was sent to various agencies for review and comments. In closing Mr. Lemmo recommended the Board approve this application for the after the fact reconstructed pier, concrete boat ramp, seawall and CRM wall.

Unanimously approved as submitted (Inouye/McCrory).

Item M-1: Issuance of a Construction Right-of-Entry to Matson Terminals, Inc. for the Construction of a Mooring Dolphin and Related Improvements at Pier 1C, Kahului Harbor, Maui.

Derrick Lanning and John Dooling appeared before the Board representing the Department of Transportation. Mr. Lanning briefed the Board and recommended authorizing the Harbors Division to issue the applicant a construction right-of-entry for the purpose stated in staff's submittal.

Unanimously approved as submitted (Yamamura/Johns).

Item C-1: Annual Renewal of Revocable Permit #OA-375-1 on the Island of Oahu.

Michael Buck Administrator for the Division of Forestry and Wildlife communicated their division has been working with the applicant on the divisions Wildlife program. A portion of the land, approximately 300 acres is being used for a public game management area. The controlled grazing of the animals in this area has reduced the need for mowing thereby reducing the cost of management and increasing the cost of game bird habitat. Mr. Buck recommended the Board approve the continuation of Revocable Permit #OA-375-1 on a month-to-month basis.

Unanimously approved as submitted (Inouye/McCrory).

Item F-1: Request for Approval to Amend/Extend an Agreement with the University of Hawaii (UH).

Athline Clark Planner with the Division of Aquatic Resources came before the Board seeking approval to extend an agreement with the Center of Conservation Research Training for a project called The Marine Gap Analysis Assessment Program. The program will takes scientific data from all of the monitoring programs and the research done throughout the state and place it into a one system. Ms. Clark recommendation the Board authorizes the Chairperson to negotiate and, subject to necessary approval, enter into Supplemental Agreement No. 2 with the University of Hawaii.

Unanimously approved as submitted (Johns/Inouye).

Item F-2: Request for Approval to Extend a Contract with the University of Hawaii (UH).

Ms. Clark informed the Board the division is seeking approval to extend a contract with the University of Hawaii for a program that will provide public outreach and training for volunteers on the removal and raising the awareness of the invasive species green algae in the state. The division is developing pilot programs to train volunteer groups and provide the community with more information on invasive species. Ms. Clark recommended the Board authorize the Chairperson to negotiate and, subject to necessary approvals, extend Contract No. 50603 with the University of Hawaii.

Unanimously approved as submitted (Johns/Yamamura).

Item F-3: Request for Approval to Enter Into a Contract with Pineapple Tweed.

Motion to Withdraw

Unanimously approved to Withdraw(McCrory/Inouye).

Item D-3: Consent to Assign One-half Interest in General Lease No. 3162, Kino Sakaitani, Assignor, to Kinue Sakaitani, Trustee and Terry S.

Sakaitani, Trustee of the Sakaitani Family Trust, Assignee, Waiakea, South Hilo, Hawaii, TMK: (3) 2-1-07: 28.

Ms. Mamiya briefed the Board and recommended the Board consent to the assignment of General Lease No. 3162.

The Board amended the following

1. Title of the submittal

“Consent to the Assign [~~One-half Interest in~~] General Lease No. 3162, Hero Hayashi and Kinue Sakaitani, to Hero Hayashi and Kinue Sakaitani, Trustee and Terry S. Sakaitani, Trustee of the Sakaitani Family Trust, Assignee, Waiakea, South Hilo, Hawaii, Tax Map Key: 3rd/2-1-07:28.”

2. Recommendation Section

“That the Board consent to the assignment of [~~one-half interest in~~] General Lease No. 3162 from Hero Hayashi and Kinue Sakaitani, as Assignor, to Hero Hayashi and Kinue Sakaitani, Trustee and Terry S. Sakaitani, Trustee of the Sakaitani Family Trust, As Assignee, subject to the following:”

Unanimously approved as amended (Johns/Inouye).

Item D-7: Forfeiture of Revocable Permit No. S-7256, Controlled Environment Aquaculture Technology, Inc., Permittee, Hanapepe Town Lots, 1st Series, Lots 54-B, 58-B and 82, Hanapepe, Kauai, TMK: (4) 1-9-10: 34, 35, 38, and 1-9-11:7.

The Board instructed staff if there are any more violations that it is brought back to the Board sooner.

Motion to Withdraw

Unanimously approved to Withdraw (McCrory/Inouye).

Item D-1: Rescind Prior Board Action – Sale or Remnant to Lionel Azevedo, Waiakea, South Hilo, Hawaii, TMK: (3) 2-4-07: por. of 07.

Item D-2: Amend Prior Board Action – Grant of Perpetual, Non-Exclusive Easement to Mark A. Robinson Trusts and Various Owners for Access and Utility Purposes, Haukalau, South Kona, Hawaii, TMK: (3) 8-7-01: 013, 014 and (3) 8-7-04:010.

Item D-5: Withdrawal from Governor’s Executive Order No. 4007 to Agribusiness Development Corporation and Reset Aside to the

Department of Water, County of Kauai Kekaha Shaft (State Well No. 5842-02) and Issuance of Right of Entry, Kekaha, Waimea, Kauai, TMK: (4) 1-2-02: por. 01.

- Item D-6:** **Consent to Assign General Lease No. S-5559, Dorothy Andrade, Personal Representative of the Estate of Antone Andrade, Sr., Assignor, to Jozette A. Caires and Thane Kaleo Caires, Assignee, Kalaheo Reservoir No. 6, Kalaheo Homesteads, 1st Series, Kalaheo, Koloa, Kauai, TMK: (4) 2-4-3: 17 & 18.**
- Item D-17:** **Amend Prior Board Action – Termination of Revocable Permit No. S-1546 to Richard Smart and Issuance of New Revocable Permit to Parker Ranch, Inc., South Kohala, Hawaii, TMK: (3) 6-3-01:pors. of 2 & 6.**
- Item D-18:** **Conservation District Use Application for OA-3154 to Relocated a Seawater Intake System, Oceanit for Ihilani Resort and Spa (Ko Olina Development), Waters Fronting Ihilani Resort and Spa, Ewa District, Oahu, TMK: (1) 9-1-57:03.**

Unanimously approved as submitted (Johns/Yamamura).

- Item D-19:** **Briefing on Clarification Regarding Enforcement Actions Pursued Under Chapter 183C, Hawaii Revised Statutes for Unauthorized Uses of Conservation District Land.**

Mr. Lemmo went over the handout given to the Board. He informed the members present when a violation occurs it would not automatically default to the landowner instead each case would be looked at individually as to whom is the responsible party. In some cases they will go after the violator, in others the landowner and at times a third party. This action will not preclude the department from going after the landowner.

- Item D-20:** **The Board will meet in Executive Session to consult with the Deputy Attorney General on the Petition for Declaratory Ruling filed by Na Moku Aupuni O Koolau Hui, Beatrice Kekahuna, Elizabeth Lapenia and Majorie Wallett.**

Motion made at 11:18 a.m. by Member McCrory and second by Member Johns to move into Executive Session to discuss the above matter.

The Executive Session ended at 12:58 p.m.

There being no further business, Chairperson Young adjourned the meeting at 12:58 p.m.

Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,

Terry Crowell

Approved for submittal:

PETER T. YOUNG
Chairperson
Department of Land and Natural Resources